S. HRG. 101-895

OCCUPATIONAL SAFETY AND HEALTH VICTIMS' RIGHTS ACT

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2442

TO AMEND THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 TO EXPAND THE RIGHTS OF VICTIMS OF OCCUPATIONAL SAFETY AND HEALTH HAZARDS, AND FOR OTHER PURPOSES

APRIL 16, 1990
CHICAGO, IL

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OCCUPATIONAL SAFETY AND HEALTH VICTIMS' RIGHTS ACT

MONDAY, APRIL 16, 1990

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Chicago, IL.

The subcommittee met, pursuant to notice at 9 a.m., in the Ceremonial Courtroom, Dirksen Federal Building, Chicago, IL, Senator Paul Simon, presiding.

Present: Senator Simon.

Staff Present: Brian Kennedy.

OPENING STATEMENT OF SENATOR SIMON

Senator SIMON. The committee hearing will come to order. We're holding a hearing on the possibility of legislation that would move in the direction of involving the families of the victims of industrial work related accidents. About 10,700 men and women die each year on the job. The question is really a number of questions, but how do we discourage this needless tragedy in our country. And one of the realities is that the families of the victims at this point are not involved at all in this process or have not been. We are taking a look today at what we ought to be doing and I'm very pleased to have as our first witness the Assistant Secretary of Labor for Occupational Safety and Health, the Honorable Gerard Scannell, who is new at that post. And let me add my personal appreciation for his openness, he has been in this field of work safety himself and we are pleased to have him here as a witness and look forward to hearing from him at this time.

I might add to all witnesses, we will enter any formal statements you have in the record, we will try and keep the formal remarks to five minutes, and then Brian Kennedy from my staff has a clock here and will nudge me when that 5 minutes time has arrived and then we'll move into questions and answers.

[The prepared statement of Senator Simon follows:]

PREPARED STATEMENT OF SENATOR SIMON

Senator SIMON. I want to thank everyone for being here for this hearing on S. 2442, the Occupational Safety and Health Victims' Rights Act. I particularly want to thank the witnesses who have agreed to appear and give testimony on this important issue. I look forward to hearing your views.

This hearing is about people. Real live people who are killed or seriously injured while trying to earn a paycheck. According to the National Safety Council, every year 10,700 American workers die as a result of injuries sustained while on the job. Many more are seriously injured. This hearing is about the rights of those victims, and the rights of the families they leave behind.

For too long we have treated family members as disinterested parties. Currently, they have no rights to information or to participate in the government decision making process associated with the enforcement or correction of job safety and health violations, even when those violations have led to the death or serious injury of a loved one.

At the very least, our Government owes victims and their families the right to participate in the process, and the right to obtain information about the investigation. On April 5, I introduced S. 2442, a bill to provide those rights. Victims of workplace accidents and their families suffer enough from the accident itself. They should not be traumatized again by the agency of government investigating the accident. We must change this unfairness in our system.

Today we will hear testimony from Gerard Scannell, the Assistant Secretary for Occupational safety and health, a panel made up of people who have lost family members in workplace accidents, and a panel of experts on Occupational Safety and Health. Each will discuss their views on the need for this legislation. I look forward to their comments, and I look forward to working with them to remedy this defect in our law.

Mr. Secretary, very pleased to have you here.

STATEMENT OF HON. GERARD SCANNELL, ASSISTANT SECRETARY, OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR, WASHINGTON, DC

Mr. SCANNELL. Thank you very much, Mr. Chairman, and thank you for the opportunity to appear before you today to describe the recent initiatives of the Occupational Safety and Health Administration to assist the families of victims of workplace accidents and illnesses.

I would like to express my particular appreciation to you, Mr. Chairman, for your efforts to bring this important issue to the nation's attention. Last fall, before I was confirmed as Assistant Secretary of OSHA, you and I met in Washington. You told me of your concerns that OSHA be less bureaucratic and more compassionate toward family members of workplace accident victims. You asked me to review the matter and make any changes that I could. I also met with Mr. Joseph Kinney of the National Safe Workplace Institute, and he and I discussed the same issue.

I told both of you that I agreed wholeheartedly with your concerns and that I would take action as Assistant Secretary to assure that families of victims are accorded the respect and courtesy that I would want to receive if a member of my family was a victim of a workplace accident. And my heart goes out to the families here today, Mr. Chairman, and I offer my most sincere apologies to

those who were not accorded by OSHA the respect that common courtesy and human relationships should have dictated.

Secretary of Labor Elizabeth Dole and I are fully committed to protecting the safety and health of workers and preventing the tragic loss of life that sometimes unfortunately occurs. We recognize the need to afford special consideration to the families of employees who die as the result of workplace accidents or illness.

Immediately upon confirmation as Assistant Secretary I took several actions to remedy the concerns raised today. First, at a national meeting of OSHA's senior managers—some 200 in all—I raised this issue as one of great concern to me. I asked that each and everyone of our staff be especially sensitive to the families of the employees victims—both personally and in correspondence—and that the senior managers carry this message back to the field. I also told the senior managers that I intend to review our policies on this matter. I have done so and a new policy directive has been issued for the staff. And I will outline the directive in a moment.

I have also tried to set an example myself to the OSHA staff. Let me tell you briefly about a personal experience which involved the families of accident victims in the tragic industrial fire and explosion at the Phillips 66 Company's Houston Chemical Complex in October 1989. I traveled to Texas immediately after the accident to oversee OSHA's initial response and to ensure that a comprehensive investigation was quickly initiated. One of my objectives in that visit was to meet with the families who had been killed or injured to assure them that we would keep them informed about progress. I would like to think that OSHA's commitment to get to the cause of the accident helped in some small way to ease the painful readjustment of the family members who lost loved ones in that terrible tragedy.

In my review of the agency policy I found an absence of clearly articulated OSHA procedures on this subject. As previously stated, we have taken steps recently to rectify this situation. Last week we issue a formal directive to our field compliance staff establishing procedures for involving victim's families. I have attached that directive to this testimony and asked that it be inserted in the record.

Senator SIMON. It will be entered in the record.

Mr. SCANNELL. Thank you, Mr. Chairman. Our procedures are designed to insure that victims and their families are accorded the attention and respect they deserve. To achieve this objective we want to make certain that families are informed of OSHA's role in an accident investigation and that those who wish it are kept informed of the progress in OSHA's investigation. Family members may also obtain releasable documents free of charge.

The directive requires OSHA to contact the family by letter at the outset of any investigation in which an employee is killed. We will offer the family the opportunity to meet in person with the OSHA staff to discuss the circumstances of the accident or illness and to share information about OSHA's investigation. An open dialogue between OSHA and the family not only opens the door to information that OSHA might not otherwise receive from family members who may be knowledgeable about the circumstances of an

accident, but it also gives us the opportunity to express our condolences to the family members.

OSHA will provide family members with information about the purpose and the scope of the investigations so that they will know what to expect as the inspection progresses. We will offer to notify the family periodically during the investigation and make a special effort to contact them at investigation milestones, such as the issuance of a citation, completion of an informal conference, receipt of a notice of contest and closing of the case. Family members will be provided with a free copy of citations upon request. We will also assign the highest priority status to processing requests from family members for copies of all other releasable information, which we will provide free of charge.

To ensure that the new policy is implemented consistently across the country the 23 states and two territories which operate their own OSHA-approved State programs will be required to implement similar programs. Several of the states, such as Minnesota, have already adopted programs to assist the families of accident victims.

Mr. Chairman, OSHA supports the goals of your legislation, the "Occupational Safety and Health Hazards Victims' Rights Act," namely to ensure that victims of occupations accidents are afforded the respect they deserve. I believe that we have administratively implemented the most important parts of your legislation. Those very few items not implemented were reviewed, but were determined by OSHA to present logistical or legal problems and were believed not necessary to achieve your goal.

Let me give you two examples. First, your bill would apply to the families of all victims, including those whose injuries are relatively minor. Our directive and policy is aimed at victims who have died as a result of a workplace accident. It would be logistically impossible for OSHA to contact every injured worker. The Bureau of Labor Statistics estimates that in 1968 there were 6.4 million workplace injuries and illnesses, 3 million of which were serious. Further, OSHA does not receive accident reports when individual employees are injured. Thus, we would be creating expectations that could not be met.

Another example concerns the involvement of families at settlement conferences. We are concerned that their presence would jeopardize the success of those discussions. Just as it is considered inappropriate for a prosecutor to involve the victim of a crime in the discussions surrounding a plea bargain, so too, it would inappropriate to involve the victim of an industrial accident in the settlement of an OSHA case. As you know, that the longer the case remains unresolved, the longer abatement of the hazard is delayed to the potential harm of workers still on the job. It is my view, however, that it is perfectly appropriate for family members to share with OSHA any information which they believe may contribute to our investigation. Our directive provides them the opportunity to do so during the investigation process.

We believe that the implementation of our new directive will substantially improve OSHA's relationship with the families of occupational accident and illness victims and will achieve the aims of your legislation through immediate and formal administrative means. I believe that the result of our initiative on behalf of the

families of employees who are killed or incapacitated on the job will lead to a permanent change in the agency's organizational attitude. The effects of our actions today should be felt long after I have departed from this agency.

In closing let me say once again that OSHA recognizes the need to afford the victims, the families of victims of workplace accidents special considerations and to keep them fully informed of OSHA's progress in the accident investigation. However, we oppose S. 2442 because it may jeopardize the settlement process and thereby delay the abatement of hazards. I believe our procedures already address the goal of S. 2442 and in addition the administration has just begun to review this legislation and may have additional comments in the future. I'm personally grateful to you, Mr. Chairman, for bringing this matter to my attention. I also want to thank Joseph Kinney for his role in focusing the public's attention on this important matter. Please be assured that we will make every effort to ensure that families' involvement with OSHA will help to alleviate rather than exacerbate their suffering.

Mr. Chairman, that concludes my formal remarks. And I will be pleased to answer any questions you may have.

Senator SIMON. Thank you very much, Mr. Assistant Secretary. First of all I want to commend you for the directive that you have issued. That is a substantial step forward. Let me, however, on the legislation as pending, point out that your statement says my bill would apply to the families of all victims including those whose injuries are relatively minor. We are not talking in—if you will have your staff take a look at the bill. We're not talking about somebody who has a sprained ankle or something like this. We're talking about when an employee is killed and when the employee, and I'm reading from the proposed bill here now, when the employee sustains an injury and the employee cannot reasonable exercise the rights of the employee under this section. In other words, we're not talking about minor injuries, we're talking about a case where, let's just say someone's in a coma. Now that person isn't dead, but the family ought to have, be able to speak for that employee, and that family ought to be involved in the process. Now, I'm willing to modify language here, but we are not talking, as your statement indicates, we're not talking about notification in every kind of injury that comes along. We're talking about only when an employee cannot reasonably exercise the rights of the employee.

Mr. SCANNELL. We apparently misinterpreted that, Mr. Chairman, and I'll be glad to go back and review that, because that was our concern, minor injuries, and the point that you're making is that this is either death or a major incapacitation. And as I read on the plane coming up this morning it covers only Section 8, which deals with deaths or multiple hospitalization. That puts an altogether different view on my statement, yes, sir.

Senator SIMON. If you could take a look at it, and we're not wedded to it, we can modify the language, but I think you understand what our aim is.

Mr. SCANNELL. I do, I do now, yes, sir.

Senator SIMON. And it seems to me our aim is the same as your aim in this and I would like to see what we could work out. Now, you also say in your statement OSHA does not receive accident re-

ports when individual employees are injured. That is not completely accurate, is it?

Mr. SCANNELL. No, it—we don't get reports except when—the requirement to report to us, sir, is when there is a fatality or multiple hospitalizations of five or more employees, then we get the reports. If it was a, you know, a hypothetical case, an injury and I suppose your example of a coma, I would have to go back and check, but I think we may not get that report.

Senator SIMON. Well, it seems to me—

Mr. SCANNELL. So it's a fatality and multiple hospitalization of five or more, but if I might just mention, Mr. Chairman, that I had a discussion with Senator Dodd on his construction safety legislation and my personal opinion is an employer can wait forty-eight hours before he or she reports a fatality to OSHA or a hospitalization, I mean forty-eight hours from the time five people are hospitalized. I personally think that's too long. And so we are looking at the reporting requirements back to OSHA on fatalities and multiple hospitalization and there will be some changes in that, and I would certainly take that into consideration.

Senator SIMON. It seems to me if we—when we're looking at this we also ought to, you mentioned when it is multiple hospitalization, when it's five or more or four or more, I'm not sure, but when someone is seriously injured and has to be hospitalized it seems to me that that ought to be reported to your agency, and so maybe we're talking about look both at the requirements of what should be reported as well as when we involve the families. Now on your objection on settlement conferences, I'm not suggesting that families have to be involved totally in all the negotiations or anything like that.

I do think it is important that families should be heard both by your agency and frankly by the employer. I had a case that came to me just within the past week and this comes from a third party so I'm not going to mention any names, I'm not entirely sure of the accuracy, but I'm sure this type of thing happens frequently. The employer—someone was killed on the job, the employer did not attend the funeral, did not contact the family, didn't do any of the kinds of things you did in the Texas incident. I think for those that have been involved in these kind of accidents it is important that they confront the family because in a very real sense they're confronting themselves and what they have done. Again, I don't know how, it seems to me we ought to be able to work out some language that is satisfactory to the Department of Labor, but permits the families to be heard before any kind of settlement is reached.

Mr. SCANNELL. Well, just so that I understand, in my directive to our staff they are to involve the family of the victim in eliciting information concerning the history of the employee and any information that they would have that we would otherwise not get, but that's in the investigation part. You're talking something different, right, you're talking

Senator SIMON. I'm talking about going beyond that. I'm talking about the family really ought to at least be heard before any settlement is reached in terms of fine or other disposition of the case. Now I am not suggesting that the family be one of the parties to whatever negotiation takes place, but that the family be heard di-

rectly. Again I'm not wedded to any specific concept other than I do think it is healthy in this process and we're going to hear today some families where I just don't think the penalty meted out would have been so meager had the families been involved. And there is no doubt the evidence is just overwhelming, that as penalties become more severe you reduce accidents in the process.

I thank you for your leadership and we look forward to working with you. It does seem to me that we're not that far apart that we cannot work out something that would strengthen the law and strengthen your ability to do the job that you're doing. And let me just add, you're attitude is a refreshing change from some of the things we've experienced in the past and I'm very grateful to you for your testimony and your leadership.

Mr. SCANNELL. Thank you Senator, Mr. Chairman, and as I said in my testimony if it wasn't for you it would not have been brought to our attention, so I thank you for your leadership, sir.

[The directorate referred to follows:]

U.S. Department of Labor

APR 13 1990

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OSHA Instruction CPL 2.89

Directorate of Compliance Programs

Subject: Incorporating the Family of Accident or Illness Victims into the Fatality Investigations

A. Purpose. This instruction provides policy and procedural guidance for dealing with the families of accident or illness victims in connection with the investigations of workplace fatalities.

B. Scope. This instruction applies OSHA-wide.

C. References.

1. OSHA Instruction CPL 2.45B, June 15, 1989, the Revised Field Operations Manual (FOM), Chapter VIII, Fatality/Catastrophe Investigations and Chapter XIV, Disclosure.

2. OSHA Instruction CPL 2.77, December 30, 1989, Critical Fatality/Catastrophe Investigations.

D. Action. Regional Administrators and Area Directors shall ensure that the policy and procedures described in this instruction are followed in all fatality investigations. This instruction will be incorporated into a future revision of the FOM.

E. Federal Program Changes (FPC). This instruction describes a Federal Program Change which affects State Programs. Each Regional Administrator shall:

1. Ensure that a copy of this change is promptly forwarded to each State designee, using a format consistent with the Plan Change Two-way Memorandum in Appendix F, OSHA Instruction STP 2.22A, CH-2.

2. Explain the technical content of this change to the State designee as requested.

3. Ensure that State designees are asked to acknowledge receipt of this Federal program change in writing to the Regional Administrator as soon as the State's intention is known, but not later than 70 calendar days after the date of issuance (10 days for mailing and 60 days for response). This acknowledgement must include (1) the State's intention to follow OSHA's policies and

procedures described in this instruction, (2) a description of the State's alternative policy and/or procedure which is "at least as effective" as the Federal policy and/or procedure, or (3) the reasons why the change should not apply to that State.

a. If a State intends to follow OSHA's policy described in this instruction, the State must submit either a revised version of this instruction, adapted as appropriate to reference State law, regulations and administrative structure, or a cover sheet describing how references in this instruction correspond to the State's structure. The State's acknowledgement on the Plan change Two-way Memorandum may fulfill the plan supplement requirement if the appropriate documentation is provided.

b. If the State adopts an alternative to Federal enforcement policies, the State's submission must identify and provide a rationale for all substantial differences from Federal policies in order for OSHA to judge whether a different State procedure is as effective as comparable Federal policy. It also must provide a general description of the policy and any plans the State has developed for implementing the change.

4. Ensure that the State designees submit State plan supplements in response to this instruction, which will be incorporated into the FOM, with the next FOM change instruction. Plan change documentation, through State FOM/OTM plan supplements, is not required to be submitted more than twice a year in response to OSHA's incorporation of Federal program changes in the FOM/OTM. If the revised manuals are issues on their target dates (April 1 and October 1), the States shall have 6 months from their issuance date to submit a plan supplement in response to the issuance of the FOM or OTM change. If an FOM/OTM change is not issued within six months of a change directive's issuance, follow the guidelines in paragraph I.1.(3)(b) of STP 2.22A CH-3 for the State's response.

5. Advise the State designees that the Regional Administrator is available to coordinate with the State in identifying sources of training which meet the requirements in Paragraph I.

6. Review policies, instructions and guidelines issued by the State to determine that this change has been communicated to State personnel.

F. Background. The FOM contains current agency policy governing the conduct of fatality investigations. However, the FOM does not address procedures to be followed by a Compliance Officer when dealing with the surviving family of a fatal workplace accident or illness victim.

1. Currently the FOM, Chapter VIII, Fatality/Catastrophe Investigations, states that OSHA's primary objectives in conducting these investigations are to determine the causes of the accident where possible, whether violations of the standards have occurred, and what effects the violations of the standards had on the accident or illness.

2. OSHA has often obtained valuable information concerning the circumstances of the accident when the cooperation of the victim's family has been sought. The family, through an exchange of information and with a point of contact with OSHA, also has been kept apprised of the course of the investigation.

3. An exclusive focus on the technical aspects of the investigation has, in some instances, resulted in distracting due attention from the human aspects of workplace deaths (suffering, sorrow and exasperation) that the family encounters when dealing with bureaucracies in both the government and the private sector.

G. Policy. Family members of employees involved in fatal occupational accidents or illnesses shall be contacted at an early point in the investigation, given an opportunity to discuss the circumstances of the accident or illness and provided timely and accurate information at all stages of the investigation as described in this instruction.

1. It shall be OSHA policy, subject to the requirements of 29 CFR Part 70, to waive fees otherwise assessable under the Freedom of Information Act (FOIA) when providing copies of disclosable portions of the accident investigation files to surviving family members or family members representing workers totally disabled by a work accident.

H. Procedures. The procedures for conducting fatality investigations outlined in the FOM, Chapter VIII, shall be modified to incorporate the following changes:

1. As soon as practicable after initiating the investigation, the CSHO shall attempt to compile a list of all of the accident victims and their current addresses, along with the names of individual(s) listed in the employer's records as next-of-kin (family member(s)) or person(s) to contact in the event of an emergency.

2. An information letter (sample letter--Appendix A) shall be sent to the family member(s) or the person(s) listed as the emergency contact person(s) indicated on the victims' employment records within 5 working days of the time their identities have been established.

   a. The issuance of this letter shall be documented on the case file diary sheet.

   b. The minimum contents of this initial contact letter shall be as follows:

      (1) The purpose and scope of OSHA's investigation.

      (2) A brief outline of OSHA's civil enforcement process, including standards, citations, and penalty system.

      (3) A request for information relevant to the investigation. This request shall include an offer to meet personally with appropriate persons to discuss any information they may have to offer.

(4) A statement offering OSHA's assistance throughout the investigation. This assistance will be at a minimum:

(a) Being informed at inspection milestones; and,

(b) The offer to meet personally to answer questions.

(c) Subject to the requirements of 29 CFR Part 70, a free copy of releasable

information from the case file at the time the file is closed, i.e., after the investigation is completed and any resulting OSHA enforcement proceedings have been concluded.

c. If the next-of-kin or the emergency contact person(s) cannot be determined through the employment records or fellow-employee interviews, the Area Director shall make a reasonable effort to identify the next-of-kin through a search of police reports, hospital admission records, coroner's records, and newspapers.

d. When the additional search does not identify a family member, the case file shall be documented to reflect the search and the extent to which it was carried out.

e. If the letter is returned as undeliverable, the letter and envelope shall be put in the case file and the date of return entered in the case file.

3. The compliance officer, when taking a statement pursuant to H.2.b.(3), shall explain that the interview is confidential. The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.

4. Follow-up contact shall be maintained with a key family member or other contact person, when requested so that

the survivors can be kept up-to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested by the family member. These contacts shall be made at appropriate times; e.g., after the citation issuance, after an informal conference has been conducted, after the contest has been received, and when the case has been closed.

5. The victim's family members shall be provided a copy of all citations issued as a result of the accident investigation within 5 working days of issuance.

6. All OSHA staff are cautioned, when discussing the Freedom of Information Act (FOIA) with the family, not to mislead them about the speed with which they can obtain a copy of the disclosable information prior to closing the case file. Staff are further cautioned that the employer's rights must be protected. There should be no premature release of facts or findings during any meeting with non-OSHA personnel, before the investigation and subsequent litigation is completed.

I. Training. All employees (Area Directors, Supervisors, and CSHOs) associated with fatality investigations shall be trained to recognize and cope with "Critical Incident Stress."

1. The training shall include:

a. The definition and characteristics of a "Critical Incident";

b. The normal stress reactions experienced by employers/employees and their families and friends; and

c. How to use these concepts in an OSHA investigation to successfully complete the assignment.

NOTE: Training may be in-house, through the OSHA Training Institute when available, by contract with local law enforcement trainers or by any other source deemed appropriate by the Regional Administrator.

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2. The initial training for current employees shall be completed within 6 months of the effective date of this instruction.

G.F. Scannell
Assistant Secretary

DISTRIBUTION: National, Regional, and Area Offices
All Compliance Officers
State Designees
NIOSH Regional Program Directors
7(c)(1) Project Managers

Appendix A

Family Information Letter

Dear _____,

Please accept our sincerest sympathy regarding the tragic accident that resulted in the death of (victim's name).

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor is conducting an investigation of the accident and would like to keep you informed, if you so desire, of our developments and findings.

Investigations of workplace accidents are initiated by OSHA to determine:

1. The cause of the accident.

2. Whether a violation of OSHA safety and health standards related to the accident occurred.

3. What effect the standard violation had on the occurrence of the accident.

If standards were violated, OSHA may issue citations and seek civil or criminal penalties against the employer.

If you feel that you or another family member may have information concerning this accident, please contact us so that an interview can be scheduled.

The Freedom of Information Act (FOIA) governs the release of information concerning accident investigations conducted by OSHA. OSHA does not release information from enforcement investigation files until the file is closed, that is, until the investigation has been completed and any resulting litigation is concluded. If you so desire, we will keep you informed of the progress of the investigation through copies of citations, appeal letters, results of any informal settlements and any other actions taken toward the resolution of this matter.

Once the investigation file is closed, the releasable portions of the file will be made available to you on request. OSHA's policy is to waive fees for Freedom of Information Act requests in these circumstances, subject to the requirements of 29 CFR Part 70.

If you have any questions regarding the investigation or any of the above procedures, please feel free to contact me:

Area Director
USDOL/OSHA
Somewhere Street
Anywhere, State 12345

Telephone ----------

Again, please accept our heartfelt condolences and please let us know if we can be of any assistance to you, your family, or friends.

Sincerely,

Area Director

Senator SIMON. Thank you very much. The next witnesses are some surviving family members of victims of workplace accidents. Lee and Mary Lou Doyle of Bloomington, Illinois. Edna Freeze and Brenda Fogle of Auburn, Indiana and Edward and Rosemarie Sochacki of South Holland, Illinois. Do we have enough chairs? I think we do. While you're all being seated there let me express my appreciation to all of you for being willing to stand up. It is an easy thing when you've gone through what you've gone through to crawl into a shell and let the rest of the world go by. What you're doing is standing up to make sure that other families don't have to go through the kind of grief that you have gone through and I am very, very grateful to you, and numberless, nameless people out there who we can't identify who can be protected are also ultimately will be very grateful to you.

Mr. and Mrs. Doyle, let me hear from you two first.

STATEMENTS OF LEE AND MARY LOU DOYLE, BLOOMINGTON, IL; EDWARD AND ROSEMARIE SOCHACKI, SOUTH HOLLAND, IL; BRENDA FOGLE, AUBURN IN; EDNA FREEZE, GARRETT, IN

Mr. DOYLE. Mr. Chairman, members of the hearing committee, my name is Lee Doyle and my wife is here with me today. We live in Bloomington, IL. And we're very grateful for this opportunity to tell our son Tim's story and with our experience with OSHA.

Our only son Timothy, then 21-one years of age was electrocuted on August 5, 1983, while working at the Bloomington/Normal, Illinois Airport for a local contractor. And in view of Tim's inexperience we felt that the employer was negligent and careless putting our son into this situation. So how are we to find out what happened to our son that morning at the airport. The employer, no. Only a brief conversation with him at the hospital is all we've ever had concerning the incident. The Bloomington Police Department, no. By the time they were notified and arrived on the scene the work had been completed and the hole that our son was working in was covered up.

The McLean County Coroner, yes. This is where we got most of the information that we were able to obtain early, because I was able to attend that and ask questions. The Bloomington/Normal Airport authority, no. They had absolute silence throughout all of this. The Bloomington/Normal Local of the International Brotherhood of Electrical Workers, no. Our son was not a union member, so of course we had silence from them.

The OSHA office in Peoria, IL, no. We heard nothing until I wrote them in June 1988, almost 5 years after the incident. We had been made aware of an OSHA citation through an article in our local newspaper, and actually my initial reaction was, was happy to hear that this was occurring. But as time went on and we never heard anything, well, of course, we just become more frustrated. It was in June 1986 that I learned that the employer had been fined $240. My initial reaction was one of anger and disappointment that we hadn't been included in this process. This just made me all the more determined to find out more about this and what happened and what about this citation and investigation of OSHA.

So in June 1988 after some considerable time I was able to get an address for the OSHA office in Peoria and I wrote to obtain a copy of the citation and the report and the first letter that I had from OSHA asked that I must be willing to agree to an anticipated fee of approximately $28. So I wrote back that we would be willing to pay whatever the fee was, but we would like to have a copy of the report and I finally received on July 29, 1988, nearly five years after our son's death.

In this report I learned of a meeting that was held on September the 9th, 1983, about one month after Tim's death between OSHA, the employer and the International Brotherhood of Electrical Workers. It was kind of shocking to see how the $240 fine for our son's death was worked down from an initial proposed fine of $600. And it just sort of pains us when I read in our local newspaper where we see accounts where common municipal fines exceeded that amount for some infraction. So I guess what we really are saying is that we would have liked to have been involved in the September 9th meeting. We would have like to have been able to receive the documents free because really it was just kind of a slap in the face to ask to pay $28 to receive the 64 pages and actually we didn't know a lot more about death than what we had read in and from the coroner's inquest until that time. And so the things we're hearing here this morning sounds like movement in the right direction. I'm happy to hear what I've heard here so far this morning.

So just in closing let me again say we appreciate the opportunity, Senator, to share our views with you and your staff. Thank you.

Senator SIMON. We thank you.

[The prepared statement of Lee and Mary Lou Doyle follows:]

PREPARED STATEMENT OF LEE AND MARY LOU DOYLE

Mr. Chairman, members of the hearing committee, we are most grateful for this opportunity to tell our son Tim's story and of our experience with OSHA.

Our only son, Timothy, then 21 years of age, was electrocuted on August 5, 1983 while working at the Bloomington/Normal, Illinois Airport for a local electrical contractor.

We learned that he probably received 5,000 volts of electricity while working to move runway lights. Visibility was poor that morning and the runway lights were turned on. Our son was not a licensed electrician and in fact had just been accepted to the electricians apprenticeship program.

It was our feeling, that because of Tim's inexperience, his employer was careless and negligent to put him into this dangerous situation.

How were we to find out what happened to our son that morning at the airport?

One. From the employer? No. There was nothing other than a brief conversation with him upon our arrival at the hospital.

Two. Bloomington Police Department? No. By the time they were notified and had arrived at the accident scene, the work had been completed and the hole Tim had been working in was covered up.

Three. McLean county Coroner? Yes. The inquest hearing was our main source of information. The employer was not required to attend.

Four. Bloomington/Normal Airport Authority? No. There was absolute silence.

Five. Bloomington/Normal local of the International Brotherhood of Electrical Workers? No. Tim was not a union member.

Six. OSHA-Peoria, IL office? No. We heard nothing from them until we wrote and requested a copy of their report. This was in June 1988, almost 5 years after the incident.

We later learned that the Occupational Safety and Health Administration had cited the Bloomington Electric Company (Tim's employer) in October 1983. We were only made aware of this by an article in the local newspaper which appeared on

October 15, 1983 (about 70 days after Tim's death). The article stated that no further comment could be made on the case because the employer had filed an appeal with OSHA concerning the citations.

Initially our reaction to OSHA's investigation was positive. We thought that we would learn more about the accident and that something good could result. However, as years went by, and we heard nothing from OSHA, our initial good feelings turned into frustration.

In June of 1986, we learned that the matter had been settled and the employer fined $240. Two Hundred and forty dollars for a human life! We were not only outraged at such a paltry fine but at a system which failed to inform us or solicit our views during its investigative process.

By this time Tim had been dead 3 years and we had still learned so little about the accident and consequent investigation that we decided to do something on our own. No one else seemed to be forthcoming with information.

There were so many tormenting questions that plagued our minds. What really happened at the airport that morning? Why was Tim even involved in such a job? Why weren't proper safety precautions followed? What was the Government doing about these violations? Everything we knew had been obtained from the media, and our own initiatives at the coroner's inquest. Finding out about the simple details of our son's death and the consequent investigation was becoming a substantial undertaking.

We finally decided to try to break OSHA's 3 years of silence by attempting to contact them on our own. This initially proved difficult since we were unsuccessful in finding Peoria OSHA's phone number or mailing address. Then in September of 1987 an article in our local newspaper reviewed a study, The Rising Wave, by the National Safe Workplace Institute. A few weeks later the CBS evening news carried a story on the same study. Soon after we wrote Professor James Holzhauer, a low professor at the University of Chicago, who was associated with the study. He connected us with Joseph Kinney, the director of the National Safe Workplace Institute.

We spoke with Mr. Kinney on the phone several times and he was able to provide us with the address for OSHA's Peoria office. We wrote them on June 29, 1988 for a copy of the OSHA citation and investigative file. On July 6, 1988 they acknowledged our request and asked for additional time to respond. On July 19, 1988 they indicated that we must address to an anticipated fee of $28 before they would process our request. We agreed to the fee and finally received the documents on July 29, 1988 (nearly 5 years after Tim's death).

Upon reading the 64-page report, we were stunned to learn the processes we had been excluded from. We discovered that there had been an informal meeting on September 9, 1983 (a little over a month after our son's death) between representatives of the employer, the International Brotherhood of Electrical Workers, Local 197 (of which our son was not a member), and the Peoria OSHA office. We would have liked to have participated in this timely meeting rather than waiting 5 painful years to become informed—waiting until our commentary would be ineffectual. It was also shocking to see how the $240 fine for our son's death was determined. It was worked down from an initial base fine of $600. it pains us when re regularly see common municipal fines that exceed this amount.

In reflection, it seems unbelievable that the dead worker's family was not included in this meeting or any other aspect of the investigation. We were completely disregarded. We knew no more about the details surrounding our son's death than the general public. The cost of the OSHA documents was another slap in the face. it seems only reasonable that OSHA would provide copies of the citation, report and correspondence at no cost to the immediate family members.

In closing, we appreciate this opportunity to share our views with you.

Senator SIMON. Mr. and Mrs. Sochacki.

Mrs. SOCHACKI. Mr. Chairman, members of the hearing committee, we appreciate the opportunity to tell our son Rick's story. Our son Rick was one of three men who died in the highly publicized Milwaukee tunnel explosion on November 10, 1988.

He was a safety engineer and had worked S.A. Healy Company for 10 years. He had been brought to Milwaukee from California just four weeks before the accident to shore up the tunnel project safety situation. He was killed in an explosion that occurred after the three men went into a tunnel to check a high level of methane

gas. This was his first morning back from being in a safety seminar in Oak Brook, where I wish he had never gone back to Milwaukee.

Rick's death left a real hole in our family. Ever since he started working on the Milwaukee project he would come home every weekend to be with his family. Rick was very athletic, he was on the swim team for four years at Thornridge High School, he jogged. He used to be preaching to the family all the time about eating right and being healthy. That's why it's so ironic that he was such a healthy man that something like this would happen.

Our experience would all show us perhaps different than the other witnesses here today. OSHA officials came to our home about one to two months after the time of the accident to explain their procedures. It was good go meet with these officials in that they allowed us to express our concerns. During this time we also gave documents of Rick's to Joseph Kinney, Executive Director of the National Safe Workplace Institute. He gave these documents to OSHA and it is our understanding that they were used to cite Rick's employer and an engineering firm for a total of $1.15 million in fines. OSHA also obtained documents from the families of the other two men killed in the accident including memos from Phil Bell, Tony Bell's father, and a diary from Barb Cony, Ron Cony's wife.

There were also some frustrating aspects to this meeting. First of all, it could have been more timely. Until we heard from OSHA the media was our only source of information. Second, the OSHA officials who came to our house were not able to provide us with any details of the accident. These details would have come out in meeting between the employer and OSHA meetings which we were not permitted to participate in. Why were we not permitted to become informed and participate in processes at the same time as Rick's employer?

We also received an informational packet from OSHA explaining the citations which were filed against Rick's employer. Once again, we were appreciative of this gesture, but we were only informed after the case was closed. As Ricks parents, we consider ourselves more than bystanders to the circumstances surrounding Rick's death. We demand to be involved.

In closing, we appreciated OSHA outreach in our situation and in fact believe that our contact with OSHA led to stiffer penalties against the employer. However, OSHA must do more to involve those who have suffered most from the death of a worker, his family.

Senator SIMON. Thank you very, very much.

Edna Freeze and Brenda Fogle, I don't know who is going to—Brenda Fogle, you'll be speaking here? You both have statements, OK.

Mrs. FOGLE. I would like to begin by thanking Senator Simon for sponsoring this legislation.

Senator SIMON. Could you move that mike a little closer to you there.

Mrs. FOGLE. I would like to begin by thanking Senator Simon for sponsoring this legislation and holding this hearing. My name is Brenda Fogle and I have come to Chicago today from my home in Auburn, Indiana to testify before this hearing to grant party status

to surviving family members of those killed in workplace accidents. Nearly 2 years ago my son Craig, along with four other young men was killed in a workplace accident at Bastian Plating in Auburn, IN. For the deaths of five young men the company was fined $41,700. To date the company has paid only $1,700 of the fine and is contesting the remainder.

To date we have been denied in our attempt to gain party status and to participate in hearings regarding the death of my son and four other young men killed at Bastian. To date no hearing has been held to compel Bastian to pay the remaining $40,000 in fines. However, one has been scheduled in September and I should have a right to be part of that hearing if I so choose.

To me it is a personal insult that I am considered to have no interest in the death of my son. Had the workers at Bastian Plating been represented by a labor union, that union would have been granted recognition as an interested party and would have been advised of and allowed to participate in the enforcement proceedings. According to current law, I, as Craig's mother, have no rights whatsoever and am considered to have no legal interest in the punishment of those who are responsible for his death.

At the time of his death Craig was nineteen years old and had only recently graduated from high school. Even though he was working full time he still depended on me for many of his day to day needs. As his mother I still felt the need to protect him and keep him safe. I was unable to protect him from this tragedy that took place at Bastian Plating on June 28, 1988. Please allow me to help protect his memory and the lives of other young men by monitoring and participating in the hearings concerning his death.

Thank you very much.

Senator SIMON. We thank you very, very much.

Edna Freeze.

Mrs. FREEZE. Good morning. My name is Edna Freeze and I am from Garrett, Indiana, and I also lost a son at Bastian Plating Company in Auburn, IN when he and Craig helped rescue other workers that were overcome by poisonous gas while cleaning out a tank.

To this day we don't know exactly what happened on that date. OSHA finally did fine the company $41,700, but they are contesting $40,000 of that saying that it was due to employee misconduct. I don't understand how you can have employee misconduct when they were fined for not having safety equipment in there. Also, at the time, Indiana workmen's comp said that his life was only worth $2,000. If you loose a finger in Indiana, or a little toe, they say it's worth $750. What we would like to do is be able to sit in on the OSHA hearing when they go in to contest their fine. My other son also worked at Bastian Plating Company, but has no rights to sit in on that hearing because it is not a union company.

I feel also that all companies that are not union should be allowed to sit in on these hearings and have as much as right as what your labor unions do. As it is right now, it seems that all labor unions have more rights than what we have, and that's why I would like to see it where we could have party status to be able to hear exactly why they figure that they do not have to pay the fine.

Thank you.

Senator SIMON. We thank you very much.

[The prepared statement of Ms. Freeze follows:]

PREPARED STATEMENT OF EDNA FREEZE

Good morning, my name is Edna Freeze and I am from Garrett, IN. I too lost a son on the morning of June 28, 1988 at Bastian Plating. My son died trying to rescue co-workers who had been overcome by poisonous fumes while cleaning out holding tanks.

To this day I still don't really understand all the circumstances that led to my son's death. Bastian Plating isn't volunteering any information. In fact they are contesting $40,000 of the $41,700 fine they were given for the death of my son and his four co-workers. Bastian claims there was employee misconduct. How can there be misconduct when there was no safety equipment? It really amazes me that $41,700 is too much to pay for the lives of five young men, ever4y one of them under 30. Under Indiana law, at the time, the company was only required to pay $2,000 in funeral expenses for each person. This compared with $750 for the loss of a little toe. It is my understanding that Bastian didn't even pay the $2,000, rather it was paid by their insurance company.

I really feel that party status for the surviving family members of dead workers would help ease the tremendous frustration we feel—frustration that is currently compounded by the difficulties experienced in obtaining information.

I just want to hear what Bastian's defense is for causing the death of Bill and his four friends.

I want to know why my son is dead after only having worked for Bastian for 5 weeks.

I also feel that employees in non-unionized workplaces should be able to designate a representative that would have legal standing in the OSHA processes surrounding a workplace death. After all, these are the people most likely to suffer if the situations leading to a worker death are not rectified.

In September, the IOSHA Board of Safety Review will hold a hearing on Bastian's appeal. When that hearing is held, over 2 years after my son's death, I want to be able to sit in the room and hear what justification they could possibly give for Bill's death. I want the opportunity to tell them about my son, about what our family lost on June 28, 1988.

I deserve to be heard. As Bill's mother, I should have at least as many rights as a labor union official—an official who might not have known my son and who would not be suffering from the loss of a family member. Perhaps if there had been a union at Bastian this would never have happened, but there wasn't. Our family is all that is left to protect Bill's memory and I deserve the right to do so.

Senator SIMON. And if I may just digress because we're dealing with State law, but as I understand the maximum under Indiana Law under Workmen's Compensation that will be paid for a death like that is two thousand.

Mrs. FREEZE. It was $2,000 at that time, on June the 28, 1988. On July 1st of 1988 they went up to $4,000. But they figure in Indiana that that's all that somebody's life is worth under the workmen's comp laws.

Senator SIMON. This is not the subject of this hearing.

Mrs. FREEZE. Yes, I know that.

Senator SIMON. One of the things that we ought to be looking at nationally is whether we shouldn't have national standards for both unemployment compensation and workmen's compensation. We hear about companies moving from one State to another because laws are less rigid in other States and we ought to be protecting people more adequately frankly than apparently the Indiana Law does provide.

All of your—

Yes, Mr. Doyle.

Mr. DOYLE. I'll just make a comment that our Illinois Law in 1983 was $1,700 for our son in Illinois. That was seven years ago.

And then we had to return that too because of another award we received. In effect we gave that back.

Senator SIMON. Again, I think we may need to be looking at national legislation in this regard. All of you heard Assistant Secretary Scannell testify, and he's still here listening to your stories, and I applaud him for not — for staying and listening and not just walking out because I think it's important that we hear from all of you.

What is your feeling about what he has suggested here?

Mr. DOYLE. I was impressed with what he said this morning, because we've heard nothing like that in seven years, you know, from the OSHA, so it's the right direction.

Senator SIMON. Mr. Sochacki.

Mr. Sochacki. We appreciate him being here and he's listening to the little people for a change. Seems like they kind of fall in the crack and I'm impressed with the changes that are coming about and also and Mr. Kinney for batting us in this direction.

Senator SIMON. Brenda Fogle or Edna Freeze, any comments.

Mrs. FOGLE. When our sons were killed instead of OSHA coming to us, we had to beg them to see us. So we went down to Indianapolis and we finally got to talk to one, and they were going to charge us for the OSHA reports, but when we went down to talk to them and they let have them without cost. Edna paid for hers but then she got reimbursed. And I think they could come to the families and, you know, let them know what has happened. They didn't do that for us, we had to go to them.

Senator SIMON. Did you have the feeling, any of you, that OSHA was designed to protect workers or what kind of feeling did you get out of the whole process?

Mrs. SOCHACKI. You mean when they came to the house or in general?

Senator SIMON. Well, your case is a little unusual, they actually came to your house. But even then, yes.

Mrs. SOCHACKI. They were very nice to us when they came. They were doing their job, you know. But I asked everybody questions. I had asked them why there wasn't somebody in that tunnel before inspecting that tunnel to know that all of those things were wrong. Why did they have to wait until the accident happened? They are supposed to have inspectors going to places, I thought any how.

Mr. Sochacki. They also said—the reason they hadn't preinspected were they were so——

Senator SIMON. Just pull that mike over in front of you a little more there.

Mr. Sochacki. They had problems covering the territory they had because there was a cut back of funds for OSHA, and they just couldn't cover it. They were spread out too thin, that was their answer.

Senator SIMON. And I might add here as we see, and the same thing has happened in the Mine Safety Inspection, which is a separate division, as we cut back on funds on inspection the number of accidents goes up and so there is some validity to what they assert.

Mr. Doyle, do you have anything further?

Mr. DOYLE. Like I said, I took, initial reaction was well, it felt good if OSHA was going to investigate it. First out when I read

that in that article in the paper that morning when we were alerted at what was happening, it felt good, but then as time went on and we heard absolutely nothing, I wonder, you know, who is OSHA really looking out for or what is the purpose of OSHA. The last five or six years that's why I've asked that question many, many, many times and when the employer sat beside me and he had to pay the $240, he said well, that was cheaper than hiring a lawyer. They were wrong, I was right, I should have been fined, it was cheaper than hiring a lawyer. He sat right beside me and said that. So, I thought who are they really working for or what is the purpose of it.

Senator SIMON. What about the settlements kind of situation. How do we involve you, how do we make sure you are heard, and Mr. Scannell, since you're still here, if you want to get involved in this conversation, please free to do so. How do we make sure families are involved in this?

Mr. DOYLE. I think that just like going to the coroner's inquest, I was notified by his office when it would be and I was invited to come, and initially I chose not to go, but I did go and I'm very glad I did. It isn't easy three weeks after the accident to go and sit through that, but then they provided me an opportunity to ask questions. So I could have gone September 9th if I had been invited, I would like to have gone to that meeting between the employer and the union and OSHA. I would like to know more about the union's position. They've been very quiet with this, absolute silence. So I would like to have been to that meeting, and the other meeting that were involved in this. I think, because my initial reaction $600 and you work it down to a $240 fine, my initial reaction, how in the world do you arrive at a figure like that.

Senator SIMON. But what you're suggesting is though even though you may not be a participant if you can be there —

Mr. DOYLE. Just like at the coroner's inquest.

Senator SIMON. Yes.

Mr. DOYLE. And observe what's going on, listen to the conversation. Learn more because no one is telling us much what happened, everyone, everything is quiet the minute the accident's happened.

Mr. Sochacki. If they would just let us know when and where so we can be there and observe. We can't be part of the process, but just so we're there knowing what's going on. I think that would mean a great deal to the family.

Senator SIMON. Mrs. Freeze or Mrs. Fogle, any addition or comments over here?

Mrs. FREEZE. One thing too that, from what I can gather, if you're not a union company you can't be represented at the OSHA proceedings. I would think that a nonunion company that you ought to go and have a representative go from that company to at least protect the ones that lost their lives there. Otherwise they will go—they can practically, you know, say anything they want to say anything they want to say about the employees and nobody can do anything about it from what I heard. You have to have party status to be able to defend anybody who has lost their life in the workplace if you're not a union. I think everybody should have the same right whether they're a union or a nonunion.

Senator SIMON. All right. Let me just again thank all of you very, very much for standing up, and as we move ahead on this we may get back to each of you just to get your reaction on what we're developing, because you have gone through this in a very special, tragic way. And you have learned things that others of have not learned. Again, by coming here and testifying and by standing up you're protecting the rights of others and I've very, very grateful to all of you.

Thank you very much.

Our final panel James J. Holzhauer of the University of Chicago Law School. Dr. Marie-Claude Rigaud, the Occupational Health Clinic at Cook County Hospital and Joseph A. Kinney, the Executive Director of the National Safe Workplace Institute.

Professor Holzhauer, we'll hear from you first.

STATEMENTS OF JAMES J. HOLZHAUER, ESQ., UNIVERSITY OF CHICAGO LAW SCHOOL, CHICAGO, IL; MARIE-CLAUDE RIGAUD, OCCUPATIONAL HEALTH CLINIC, COOK COUNTY HOSPITAL, CHICAGO, IL; JOSEPH A. KINNEY, EXECUTIVE DIRECTOR, NATIONAL SAFE WORKPLACE INSTITUTE, CHICAGO, IL

Mr. HOLZHAUER. Thank you very much Senator Simon, I'm honored to be here, I'm honored to be here today.

As you know workplace fatalities leave behind scores of victims.

Senator SIMON. Can you move that microphone over.

Mr. HOLZHAUER. This one?

Senator SIMON. That one, yes, that's the one.

Mr. HOLZHAUER. Sure.

Senator SIMON. OK.

Mr. HOLZHAUER. Workplace fatalities leave behind scores of victims. There are parents, brothers, sisters, other relatives, fellow workers, friends, coworkers. They are left with great anguish and grief that takes time to heal. The anguish and grief is, if anything, exacerbated by the fact that these deaths are all so sudden and so unanticipated. Increasingly our Federal and State laws in other context recognize the rights of family members and friends to participate in proceedings involving the death of their loved ones. These rights stem from the fact that society and the law that reflects society acknowledges that the laws associated with misconduct leaves behind another set of victims and another set of injuries. The aggrieved individuals who must cope with grief.

S. 2442 presents two important issues. The first is whether or not the rights of family members should be addressed, the second is whether those rights should be incorporated into a statute. Before we answer those question we must examine the status quo. At present the Occupational Safety and Health Act of 1970 does not recognize rights for any parties other than individuals who are injured and worker representatives. The courts have interpreted the term worker representatives to mean the labor unions that formally recognize, represent the employees for collective bargaining purposes.

The Institute has researched this legal issue and found that the courts have been quite consistent on that. In effect, the law treats the aggrieved family members of deceased workers as if they did

not exist. As a result, OSHA, in the past, required family members to file Freedom of Information Act requests in order to obtain documents relating to their loved one's injuries and often made them jump through many hoops and spend a substantial sum of money, as we've heard, in order to achieve what would seem to be basic human rights.

As a practical matter, requiring family members to file FOIA requests often is the same as denying them the information altogether. Many families are not going to courageous and tough enough to go through that whole process and are not going to spend the money that's necessary to go through that process. They are going to see the Federal bureaucracy, the red tape, and they are going to give up and they're going to live with exacerbated grief.

Now, in the past because of its policies the Occupational Safety and Health Administration often took as much as nine months to answer FOIA requests. Most OSHA adjudications are completely over within the nine month period and thus the families have effectively been denied of any information during the period of time that they need it. This situation is intolerable. The Federal Government should not add to the grief of those unfortunate families who have lost loved ones in industrial accidents. Denying them the information they need to understand their loved one's death and to handle their grief borders on cruel and unusual punishment of innocent victims. Clearly it's necessary to give family members the right they need to obtain information and to participate in adjudication in other proceedings involving their loved one's death, and S. 2442 would accomplish that laudatory result.

The second question presented by S. 2442 is whether it's necessary to incorporate these rights into a statute. As we know at this point the OSHA administrator has acted to give family members certain rights, and that's wonderful, I think that they've taken this action and that they should be applauded for taking this action. On the other hand we should recognize that that doesn't go far enough for a couple of reasons. First of all, it doesn't go far enough because what an OSHA administrator does today another OSHA administrator can undo tomorrow.

Second, OSHA, and the OSHA administrator governs primarily what happens in states that are directly regulated by OSHA. State plan states will not be subject to the same regulation from my understanding, and I think the statute should make it clear that both State plan states and directly regulated Federal jurisdictions, the family should have these rights.

The indignity with which our government has treated victims in the past extends beyond the inaccessibility of information, of course. At every step of the adjudicative process, victims are locked out of important governmental decisions. The result of this lock out is an enforcement in an adjudication system that is unfair to family members and that also does not often result in full and fair enforcement because information that OSHA might receive that could be incorrect could not be corrected by the people who are in the best position to know that.

I don't see what's wrong with including victims and their relatives who want to know why decisions are being made and what information is available in that process. It seems that this is a

basic human right, a basic courtesy and I applaud Senate Bill 2442 for finally providing that human and that courtesy.

Thank you.

Senator SIMON. Thank you.

[The prepared statement of Mr. Holzhauer follows:]

PREPARED STATEMENT OF JAMES HOLZHAUER, ESQ.

Workplace fatalities leave scores of victims. There are parents, brothers and sisters, other relatives, fellow workers and friends. They are left with grief and anguish that takes time to heal. Increasingly, our Federal and State laws are recognizing rights for aggrieved parties. These rights stem from the fact that society—and the law that reflects society—now acknowledges that the loss associated with misconduct leaves behind another set of victims—aggrieved individuals who must cope with grief.

S. 2442 presents two important issues. The first is whether or not the rights of family members should be addressed. The second is whether those rights should be incorporated into law.

Before we answer these questions, we must examine the status quo. At present, the Occupational Safety and Health Act of 1970 does not recognize rights for any parties other than "worker representatives." The courts have interpreted "worker representatives" to mean labor unions. the Institute has researched this issue and would be pleased to provide you a synopsis of these cases.

In effect, the law treat the aggrieved family members of dead workers as if they do not exist. As a result, in the past, the Occupational Safety and Health Administration (OSHA) required family members to file Freedom of Information Act requests and pay search and copy fees for information related to accident investigation and enforcement proceedings.

As a practical matter, requiring family members to file FOIA requests often is the same as a denial of information. The use of legalistic language often will discourage people from pursuing these documents. Still other people have had to spend funds—money they often don't have—to hire attorneys to seek these documents.

Likewise, in the past, OSHA has taken months to answer FOIA requests. As the Institute documented in its study, UNMET NEEDS, OSHA took as long as 9 months to respond to FOIA requests. Most OSHA enforcement adjudications are completed within 9 months, meaning that the family is left with meaningless historical documents long after they experience the tragedy.

This situation is intolerable. The Federal Government should not add to the grief of these unfortunate families. denying them the information they need to understand their loved one's death and to hand their grief borders on cruel and unusual punishment of innocent victims. Clearly, it is necessary to give family members the rights they need to obtain information and to participate in the resolution of any OSH Act investigation of their loved one's death. S. 2442 would accomplish that laudatory result.

The second question, whether this matter is best accomplished by law, would ordinarily be easy to answer, but the OSHA Administrator now has wisely acted to give family members by agency directive. He has boldly addressed the problem and its to be applauded for that. but there are several reasons why S. 2442 is nevertheless necessary. The unique structure of the OSH Act, allowing States to develop their own programs, results in significant limitations for the Federal Government. In essence, the OHSA Administrator is left with moral persuasion as his only "tool" to get States to go along. Finally, any directive made by an OSHA Administrator in 1990 can be undone by any future OSHA Administrator.

The indignity with which our Government in the past treated victims extends far beyond the inaccessibility of information. At every step of the adjudicative process victims are locked out of important governmental decisions.

The result of this lock-out is an enforcement and adjudicatory system that largely favors employers.

What is wrong with including victims and their relatives who want to know how and why decisions are being made? The current system is clearly unfair. It should be changed and the right of participation established for these victims. When these steps are finally taken, victims will have a sense of long overdue justice.

Senator SIMON. Dr. Rigaud.

Dr. RIGAUD. Mr. Chairman, good morning. It is a privilege for me to respond to your invitation to testify today on your legislation, Senate Bill 2442, establishing these victim rights of Occupational Safety and Health Administration. I'm a Board-certified psychiatrist and Fellow of the American Psychiatric Association and have been associated with the University of Illinois Occupational Medicine Department for the past four years. My perspective on this legislation is as a medical practitioner and also as a public health professional. Let me advise you, Mr. Chairman, this legislation is an important public health and pro-family measure that deserves to be passed by the Congress and signed into law.

Psychiatrists have had a different concept of the emotional victim, at least since 1977 when the Committee on Psychiatry and Industry of the Group for the Advancement of Psychiatry established that victims, the notion of victims should be extended to family of injured workers or workers killed on the job.

Indeed it is my experience, supported by the work of many scientists that whether the injury is serious enough to lead to disability, or is actually fatal and results in the death of the worker, the emotional, psychological consequences for the victims, the family members and close friends are both associated with loss and grief.

It has been stated that perhaps on of the most prominent sources of psychological disorder, whether chronic or acute, is the death or severe injury of a family member or close friends. For the injured worker and his family he leaves a job with anger, guilt, survivor's guilt, which has been studied extensively in recent years, shame, loss of self esteem, helpless rage, frustration, depression and helplessness are very, very hard

The phenomenon of bereavement is particularly problematic in a survivor of sudden death, and as we know workplace injuries are sudden and they are not expected, therefore this increases the risk of psychological disorder which can later on show up as a severe physical or psychological disorder.

It is my professional judgment that based on the findings presented in the statements under consideration, involving the victim in all phases of accident investigation would have a major preventive and beneficial effect on the work of mourning that the victims have to go through.

First, it would allow the victim to be involved in fact finding and examine the situation in a realty-based frame, since it eventually provides information about cause and effect of the unfortunate event and most victims tend to be fortified and aware of trying to make sense out of what happened, trying to understand how this could have been avoided. So this would insert that type of communication. In fact, this is one of the principals, the fact finding principal that is used extensively in crisis intervention.

Second, it would help satisfy the need that the victim has to make sense of the loss, thereby maximize the natural immunization process necessary for the work of mourning to proceed.

Third, and most importantly, active involvement of the victim would defocus his or her attention and emotional energy from frustration and helpless rage, and channel them into productive activities and efforts to right the wrong and reinstate some of what has been lost.

Mr. Chairman, the death of a family member from an event like a sudden workplace accident can trigger a series of dysfunctions as the victim get on with the work of mourning. It makes no sense that the government add to this burden by denying victims access to the processes and decisions that the government uses. Indeed, there are few events of greater importance to the lives of citizens than such investigations. By opening the process to these victims we are, in effect, encouraging damage control and therefore encouraging preventive health. In closing, Senate Bill 2442 should be seen as more than just rights legislation. It is, indeed, Mr. Chairman, preventive health legislation.

Senator SIMON. Thank you Dr. Rigaud.

[The prepared statement of Dr. Rigaud follows:]

PREPARED STATEMENT OF MARIE-CLAUDE RIGAUD, MD, MPH

Mr. Chairman, it is a privilege for me to respond to your invitation to testify today on your legislation, S. 2442, to establish victims' rights at the Occupational Safety and Health Administration. I am a Board-certified psychiatrist and have been associated with the occupational health clinics at the University of Illinois for four years. My perspective on this legislation is as a medical practitioner and public health professional. Let me advise you, Mr. Chairman, this legislation does more than establish rights that have been neglected for far too long. Your legislation is an important public health and pro-family measure that deserves to be passed by the Congress and signed into law.

Psychiatrists have broadly defined the term victim at least since 1977 when, in a study on compensation, the Committee on Psychiatry and Industry of the Group for the Advancement of Psychiatry concluded that in the case of injuries, the family of the "hurt" person should also be considered among the victims.

Further, the Committee stated that the incapacitation of a family member significantly alters the dynamic equilibrium within the family structure. Tragically, family members do not often recognize this loss and how they are affected. Essentially, each family member often goes through reactions that can have a profound adverse psychological and even physical effect on the health of the family member.

It has been my experience, supported by the work of many scientists, that, whether the injury is serious enough to lead to disability, or is actually fatal and results in the death of the worker, the emotional/psychological consequences for the victims--the family members and close friends--often are quite severe, both physically and emotionally.

Indeed, when an individual suffers a major body loss or dysfunction, he or she goes through a definite mourning process. Close family members also mourn that person as they have previously know him or her.

It has been stated that perhaps one of the most prominent sources of psychological disorder, whether chronic or acute, is the death or severe injury of a family member or a close friend. In addition to the closeness of the survivor's relationship to the deceased or injured, another important factor which may influence the reactions is the survivor's perception of the preventability of the death or injury. Other factors are attribution of responsibility, foreseeability, intentionality and justification.

For the injured worker and his family, feelings such as anger, guilt or shame, loss of self esteem, rage and depression are commonly experienced as

The feelings of rage are especially difficult, because they are often diffuse and have an irrational quality, in part because the linkage in term of causation is not clear.

Feelings of helplessness are also frequent. Survivor's guilt has been extensively studied, especially in relation to disasters and catastrophes, and it has been theorized that it could be a protective reaction against feelings of helplessness.

The phenomenon of bereavement is particularly problematic in a survivor of sudden death. Of course in the case of injury of death from a workplace accident, there always exists an element of unexpectedness, thereby an increased risk of developing a pathological emotional reaction, such as generalized anxiety disorder, depression or complicated bereavement. When a loss occurs suddenly, and without warning, it also shatters the victim's assumptions about the orderliness, rationality and fairness of the world.

In many ways, feelings and reactions observed after severe and fatal injuries are not different from those reported following disasters. A "disaster syndrome" has been described and studied in groups and in individuals. The most common problems were reactions to bereavement, and acute grief.

One particularly important aspect of the bereavement or grieving process is the tendency for the "victim" to go over the events that led to the injury or death, to try to relive those events, understand the what, how, and why, and to be preoccupied with thoughts about how the loss could have to be preoccupied with thoughts about how the loss could have been avoided, as well as with questions about responsibility attributions.

Whether an individual is able to go through the phases of bereavement, and complete successfully what has been referred to as the work of mourning, he or she may avoid long-term emotional and psychological problems. There are several ways in which the work of mourning can be facilitated.

It is my professional judgment, that based on the findings presented above, involving the "victim" in all phases of accident investigation would have a major preventive and beneficial effect on the work of mourning.

Firstly, it would allow the "victim" to be involved in fact findings, and examine the situation in a reality-based frame, since it eventually provides information about cause and effect of the unfortunate event. This, by the way, is one of the general principles of therapy used in dealing with individuals in crisis. In addition, it would decrease the likelihood of progressively impaired reality testing, and the ripple effects which can occur.

Secondly, it would help to satisfy the need that the "victim" has to make sense of the loss, thereby maximize the natural immunization process necessary for the work of mourning to proceed.

Secondly, it would help to satisfy the need that the "victim" has to make sense of the loss, thereby maximize the natural immunization process necessary for the work of mourning to proceed. 3

Thirdly, and most importantly, active involvement of the "victim' would defocuse his or her attention and emotional energy from frustration and helpless rage, and channel them into productive activities and efforts to "right the wrong and reinstate some of what has been lost."

Before I close my remarks, you will be pleased to know the American Public Health Association is reviewing S. 2442 and will likely endorse this legislation at its next meeting. Dr. Howard Frumkin, MD, MPH, of the University of Pennsylvania medical school heads a task force that is examining S. 2442.

Mr. Chairman, the death of a family member from an event like a sudden workplace accident can trigger a series of dysfunctions as "victims" get on with the work of mourning. It makes no sense that the government add to this burden by denying "victims" access to the processes and decisions that the government uses. Indeed, there are few events of greater importance to the lives of citizens that such investigations. By opening the process to these "victims" we are, in effect, encouraging "damage control" and therefore encouraging preventive health. In closing, S. 2442 should be seen as more than just "rights" legislation, but also preventive health legislation in the best sense of this expression. Mr. Chairman, I have included as an Appendix to my statement a list of references on this most important subject.

APPENDIX--Selected Sources on
Family as Survivors/Victims

What Price Compensation? Group for the Advancement of Psychiatry, Committee on Psychiatry and Industry, Vol. IX, Publication No. 99, June, 1977.

S. Cobb and E. Lindenmann, "Neuropsychiagtric Observations during the Coconut Grove fire," *Annals of Surgery*, Vol. 117, No. 6, June, 1943.

Stephen L. Schwartz, A Review of Crisis Intervention Programs.

Darrin E. Lehman, et al, "Long Term Effects of Losing A Spouse or Child in a Motor Vehicle Crash," *Journal of Personality and Social Psychology*, 1987, Vol. 52, No. 1, 218-231.

Rudy Ciuca et al, *Family Survivors of Suicide and Accidental Death: Consequences for Widows--Suicide and Life Threatening Behavior*, Vol. 18 (2), Summer, 1988.

David Aderman et al, *Effect of Emotional Empathy on Attribution of Responsibility* (Duke University).

Ronald W. Perry & Michael K. Lindell, "The Psychological Consequences of Natural Disasters: A Review of Research on American Communities," *Mass Emergencies* 3 (1978) 105-115, Elsevier Scientific Publishing, Amsterdam.

James H. Shore et al, "Evaluation of Mental Effects of Disaster," *American Journal of Public Health*, March, 1986, Vol. 76, Supplement. 77-82.

Dan Blazer et al, "Stressful Life Events and the Onset of a Generalized Anxiety Syndrome," *American Journal of Psychiatry* 144:9, September, 1987. 1178-1183.

Alfred M. Freedman et al, "Recognizing the Role of Bereavement and Reactive Depression in Modern Psychiatry," *Psychopathology* 19: suppl. 2, pp. 37-46 (1986).

Senator SIMON. Mr. Joseph Kinney, who heads the National Safe Workplace Institute, and let me note the presence of his parents here, who have a special interest in this whole field also. Mr. Kinney.

Mr. KINNEY. Thank you very much. First of all I would like to ask your permission to give four sets of documents beyond our testimony. We did a very extensive survey of the family members of dead workers last year. I think that would be very helpful in building the record. Let me just say very quickly that what we found was that people are very angry and very bitter and very frustrated toward OSHA and they didn't know what was going on with the agency and we also asked another set of questions having to do with whether or not they would they participate if they had right and clearly they would. So we would like to have that in the record.

Senator SIMON. It will be entered in the record.

Mr. KINNEY. OK. The second thing is we work with an attorney in Indianapolis, Bill Grove, to file a petition for Edna Freeze and Brenda Fogle and others in that case, and the petition for status was denied. I think that's very critical for reasons I'll talk to in a minute. But the reason that was used, I think, reflects really a very acute neglect a lot of people have on this issue toward victims family members. The third thing that we would like to give you is a legal analysis of all——

Senator SIMON. Just if I may go back to your—it was denied for what reason?

Mr. KINNEY. Well, they just didn't think it was appropriate, you know, for Brenda and Edna Freeze and the Links and the other families to have any participation in any aspect whatsoever.

So the third thing that we will give you is a legal analysis of all the court decisions having to do with the definition of worker representative, and again, as Jim said it was all clearly, has to do with labor unions.

The fourth thing, I think would be very useful and we can refer to it as a composite chart based on the experience of those two hundred and three families and to show when and what is that information versus when families got information if they knew how to exercise their rights, which most of them don't.

Let me just say with those former counts aside I would like to commend Assistant Secretary Scannell. You know we fairly researched his record at Johnson and Johnson within the period that he was there, he reduced injuries 91.9 percent, very impressive. Next to the Lutheran minister, at the infirmary, I don't know anyone who is more compassionate and caring than Mr. Scannell. He's been very accessible to us and I know that he means well on this issue.

Also, I would like commend Michael Connors, who is the regional administrator here in Chicago. When the Milwaukee tunnel explosion occurred I was interviewed on TV, and I said that the S.A. Healy Company had made the men that were killed the "coal miners' canaries." And that comment, you know, ran in Associated Press stories all over the United States. And Jim called me the next morning and said I hope you checked out your liability insurance and I said, don't worry. And, you know, we had already seen

the problems that they had getting into the tunnel and inspecting it. We knew all of the Healy citations here in Chicago, we knew this was a company that really had a lousy record. But, you know, I talked to Mike, and said, Mike, you really need to talk to these people and get them involved. And I talked to all of them, and they gave me lots of stuff and they gave OSHA lots of stuff that obviously was very helpful and that's one of the reasons why that fine was 1.15 million dollars and not $150 or $1,500 or something like that.

So I think that interaction really helped, really helped that case. And obviously, too, I want to commend your leadership for caring enough to introduce this legislation. So obviously we don't have a PAC, we're not going to make a lot of campaign contributions to you, but we appreciate your willingness to go out and be a leader. Addressing the merits — and you know I've made a long statement, I don't want to go on to that. That's for people to read if they want to read.

You know I was reminded the other day in talking with Jim about this, that the United States is a society of laws, and I think when we look at this we need to understand that we have really two options here, pass this bill or make Jerry Scannell OSHA administrator for life. That might be part of the legislation. You know maybe they might not want to favor going along those lines. But seriously his predecessor, John Pendergrass, thought this was a terrible idea and who knows in the future some successor OSHA administrator may think this is terrible idea and rescind or redraft it. So that's why this should be in law and not as a written directive.

By the way we did send Mr. Pendergrass a Freedom of Information Act request asking for him to give us information on all victims families member he met in his many years at OSHA and he wrote back and said, one, you. So I don't think that's a very good record, that's what I fear, if we let the directive become the matter of course. Clearly OSHA has had some difficulty with the 21 States that have private sector jurisdiction, and Mr. Chairman, we have got to recognize that. For example, there's been tremendous difficulty in getting some of the States to go along with the egregious penalty program. There's well over 50, 60 or more companies, employers who have been fined well in excess of a hundred thousand dollars by the Federal Government. And I suspect it's probably less than five by State governments. So that's just an example that it's tough to get the states to follow, and I think your idea about national standards in a lot of areas is really very, very important.

The other thing I think needs acknowledging here is the whole issue of the positive resources that we have to protect workers. We did a survey of a hundred and fifty-three blue collar workers, and 91.9 percent told us that they felt that OSHA should be funded at a level equal to greater than EPA level. Well, we've got news for them, for every buck EPA gets OSHA gets a nickel. You know these crumbs off the OMB table, and I think that clearly we look at that. I think that——

Senator SIMON. I'm getting a signal from Brian Kennedy here, on time.

Mr. KINNEY. I agree totally with Dr. Rigaud as this is a preventive health measure. I can't how many divorces I've been through

and strokes and what not with different families. All sorts of maladies. I think that if you look at the section that talks about settlements, if you just struck out the word participate in, and therefore would limit the participation to an appearance and a statement then I think you might be able to handle the administrations concerns and be able to have a bill that they could warmly endorse, hopefully by May 1st at the next hearing.

[The prepared statement of Mr. Kinney follows:]

PREPARED STATEMENT OF JOSEPH A. KINNEY

Mr. Chairman, it is a privilege to respond to your request to appear before you today to discuss the merits S. 2442, legislation which, if enacted into law, will provide important rights, that have been ignored far too long, to surviving family members of dead workers. We salute you for introducing this legislation, *which, in our judgment, is the single most important reform that can be made to advance workplace safety and health in the U.S.*

The National Safe Workplace Institute was created on May 28, 1987 as a not-for-profit research, education and intervention organization. Since the early days of the Institute, we have believed that the Occupational Safety and Health Act of 1970 needs to be changed. It is our judgment that establishing the rights of victims is paramount among the changes that are so desperately needed if we are to fulfill the promise of this law: safe and healthy workplaces for all workers.

This year, 10,000 men and women will die from job-related accidents. Another 50,000 - 100,000 men and women will die from occupational disease and 70,000 will become permanently disabled. Another 390,000 will contract the first stages of job-related disease. We trail many industrialized nations in our ability to protect workers from work-related injuries, illnesses and fatalities, a situation that could worsen in the 1990's. The U.S. will continue to experience excessive job-related deaths, injuries and illnesses until our laws and enforcement strategy are changed.

As you may recall, Mr. Chairman, the Institute reported this past Labor Day that the average U.S. worker is 5.8 times more likely to be killed on-the-job than a worker in Sweden, and 3.5 times more likely to die on-the-job than a worker in Japan. This is an unacceptable situation to the families and friends of workers who are killed and injured, to workers who are in jeopardy of losing their lives or livelihood, and to people everywhere who value life.

Currently, the Occupational Safety and Health Administration (OSHA) is largely an employer-driven agency in the way it conducts its enforcement operations. While the OSH Act provides for "worker representative" status, this phrase has been construed by federal courts as meaning "union." For the

84% of U.S. workers who lack the benefit of union representation, the effect of the status quo means that most victims have no representation or rights with respect to OSHA proceedings. 2

As a result of this situation, OSHA and the Occupational Safety and Health Review Commission only hear the views of employers, unless a union is involved that will exercise its rights. There is no justice or balance in under these circumstances. This is one of the primary reasons, in our view, why OSHA has evolved into one of the weaker federal regulatory agencies with penalties that are typically outrageously low. The Institute, in its Labor Day 1989 Report showed that penalties in construction deaths, with one or more serious safety violations, are often less than $300.

OSHA is in drastic need of reform--a major overhaul--if it is to work effectively to advance safety in the U.S.. By hearing from and interacting with the people most affected by its workings--the people that are with us today--OSHA will begin to understand the hardship that workplace accidents impose on families and, for once, will have the leverage to level the playing field in dealing with employers.

VICTIM NEGLECT

The existing lack of rights is more a function of neglect than of intent. We, at the Institute, are constantly reminded that the OSH Act was not intended to create a punitive agency. To us, such a distinction is meaningless because it is clear that OSHA has significant flexibility in executing the law to impose penalties that have the potential to deter safety violations. For example, the largest construction penalty in the Midwest Region of OSHA was $15,700 before the Institute was established. The largest penalty is now $1.15 million--for violations that led to the deaths of three men in Milwaukee on November 10, 1988. In that instance, it is important to note that OSHA had a positive, if limited, interaction with the surviving family members and operated under extensive media coverage.

Today, OSHA is poorly funded and significantly understaffed. The situation is critical for both federal OSHA and the State Plan States with private sector jurisdiction. The paucity of support has continued even though OSHA has been severely criticized in several reports by the Inspector General of the Department of Labor, by the U.S. General Accounting Office,

and by numerous Congressional committees for not meeting the needs of the American worker. 3

Let us illustrate a critical perception versus reality gap that must be addressed. Last year, we surveyed 153 blue collar workers in Indiana to find out what they thought about workplace safety. 91.9% of those asked reported that they believed that the federal government should spend as much or more on OSHA than it does on the Environmental Protection Agency. In reality, the federal government spends 20 times more on EPA than OSHA. This is true even though EPA has reported that about 50,000 Americans die each year from environmental pollution, as compared to at least 60,000 Americans for job safety-related causes.

Today, we have at least six fish and game inspectors in the US for every job safety inspector. The crying lack of emphasis given to U.S. occupational safety and health programs is wrong, and costs thousands of lives each year. This situation should be addressed at the earliest possible time. But the status quo is likely to remain as long as the people most affected--injured workers and family members of dead workers--are left out of the information loop and do not feel empowered to act. Hence, S. 2442, is critical to forming a new constituency for U.S. job safety, a constituency with a moral authority that demands that a neglected group of citizens be heard, not only by OSHA, but by the U.S. people.

For the remainder of this testimony, we will focus on two issues. The first issue on which we will focus involves public opinion--what surviving family members, workers and other people think about OSHA, victim's rights, and job safety. As you know, we have done the only nationwide survey of the surviving family members of dead workers, which was completed last year. The second issue on which we will focus, later in this statement, is the legitimacy of government.

INSTITUTE SURVEYS

The National Safe Workplace Institute recently conducted a survey involving 208 families of workers killed in job-related accidents between 1986 and 1988. The purpose of this survey was to learn what these families thought and felt about OSHA, how the agency (and corresponding state agencies) had treated them, and what they knew about OSHA's services and its obligations to them. A total of 208 families responded to written

questionnaires that were mailed to about 250 families in all 50 states during May and June of 1989. The tone and answers of the responses indicated anger and frustration from citizens who felt excluded from the processes of their own government. 4

Among the families surveyed:

•49% said that they had never seen the citation or investigation report issued by OSHA or corresponding state agency in their family member's death.

•37% said that they did not even know they could have access to this information.

When asked how she was treated by OSHA, Lynda Bradley of North Dakota replied, *"They didn't treat me at all. It's as though the families didn't even exist or have a right to know anything about the case or the findings regarding the case."* In response to the same question, Jana Studelska, a Minnesota resident, said the she felt *"Outraged that a public agency can be allowed to operate in this way."*

This anger and frustration with OSHA has severely tarnished the agency's image with the working public. In fact,

•71% of respondents characterized OSHA as a "poor" or "below average" government agency.

Joyce L. Reamy of Maryland said *"I believe it's an 'I don't care' agency. As you can tell, we are very bitter with OSHA."*

SAFETY A LOW PRIORITY

This anger and frustration with the government is only compounded by the fact that many workers feel that their employers do not give safety a high priority. This was indicated in another Institute survey, which collected the views of 153 Indiana blue collar workers, that we mentioned earlier. Key facts from this survey:

•63.6% reported that their employers give a low priority to safety and health. 5

•28.6% of the respondents said they do not feel safe at work.

•57% said that they had suffered a serious on-the-job injury.

Interestingly, Indiana blue collar workers are not alone. A 1989 poll by Sirota, Alper & Pfau, a New York based management polling firm, found that employees considered "safe working conditions" the most important factor examined out of 26. This poll, it is important to note, included both blue and white collar workers. It is no wonder that many Americans feel increasingly disenfranchised when they can no longer trust either their employer or their government, and in fact may see the two as accomplices, particularly with respect to workplace safety and health.

To return, for a moment, to our survey of the family members of dead workers, we also wanted to know what they thought and, especially, if they would exercise their rights if granted by law. Key findings include:

•93% believed that OSHA, as a matter of policy, should contact family members to explain its procedures.

•86% agreed that the family should have the right to meet with OSHA before the investigative file is closed.

•98% felt that they should have the right to know if and when OSHA was meeting with employers to resolve penalties regarding their family member's death.

•71% reported that they would attend such meetings if given the right.

When asked what changes they would like to see within OSHA, all but a few demanded increased contact with the family and greater victims' rights.

FRUSTRATED WITH GOVERNMENT

In sum, the results of these surveys indicate that the family members of workplace victims are frustrated with their government and feel excluded

from its processes. Furthermore, employees around the country increasingly view occupational health as a major concern and want an effective OSHA to safeguard their livelihood. *The families of workplace victims want significant changes in the way OSHA operates.* Most of all, they want to be allowed to participate in all phases of enforcement and adjudicative processes. We can no longer deny this request for citizen involvement in this aspect of our government. 6

LEGITIMATE GOVERNMENT

It is critical that we recognize that the Occupational Safety and Health Act is being enforced in a way that is fundamentally unhealthy to our democratic society. It is critical that our government–OSHA and the state governments that have job safety jurisdiction--proactively incorporate the views and experiences of the people most affected by job-related accidents--the surviving family members of dead workers--into programs and policies. *As the Institute has documented in countless cases, the government has denied, intentionally or otherwise, surviving family members of dead workers basic information that should be a right, not a privilege. Surviving family members pay taxes.* In many ways, OSHA should be as much their agency as the agency of employers or of any other interest group.

The problem and challenge of victims' rights is somewhat unique in the U.S. *Regrettably and tragically, the U.S. has more divisions between elite socio-economic groups and the grass-roots than most advanced industrialized nations.* However, other stratified nations have mechanisms for balancing power and justice that may be declining in the U.S. Examples of power-balancing mechanisms on the decline in the U.S. include labor unions, the press, and representation in public bodies. In the past two decades, we have seen labor union membership drop by one-half, the number of daily newspapers decline by more than one-third, and Congressmen and Senators that are bought by PACS and other contributions. These developments all combine in such a fashion as to diminish grass-roots Americans. The growing gulf between the U.S. power structure, elites, and grass-roots Americans cannot help but leave grass-roots Americans feeling hopeless and helpless.

There is, on this issue, cause for hope. The hope stems from the fact that most Americans value and cherish life. Families who have lost

members to premature, traumatic death have a moral license that permits them to speak and be heard in society. *Of course, this license is meaningless if these people are not empowered to use this license.* As a result, one of the most critical missions of the Institute is to encourage citizens, who have suffered the loss of a loved one, to participate in discussions of occupational safety and health issues. 7

It is crucial that we understand that most job-related deaths are, by nature, traumatic events. It is therefore crucial that government, especially a democratic government, not further contribute to anguish that families experience. Psychiatrists have established that the surviving family members of dead workers are, in many ways, as much the victims of a fatal or serious accident as the deceased or injured individual. One might characterize this as the "ripple effect" of injury. The Institute has witnessed this ripple effect on many occasions. The ripple effects we have seen include strokes, heart attacks, alcoholism, violence, divorce, drugs or other forms of antisocial behavior, usually occurring 18 months to three years after a death. It is possible, even likely, that workplace accidents trigger emotions and psychological behavior that result in significant dysfunctions with a cost to society that may be as large as the original accident itself. Hence, a government that keeps people out of an important process not only lacks legitimacy in our view, but also contributes to further injury.

WITNESS CONTRIBUTIONS

The Institute is proud of the contributions of the witnesses that you have heard today--particularly the victims who have found the courage to relive their anguish in the hope of a more just--and workable--society. We have lived through and with the anguish felt by these people--and others like them--in every state. The thoughts of some of these people were captured in our book, **FACES--The Toll of Workplace Death on American Families**, which was published last year in recognition of Workers Memorial Day.

We know, and have tirelessly documented, the fears and the pain of the families of America's workplace dead. In our work with the family members of deceased workers, we have also come to appreciate their dreams and hopes. S. 2442 is critical to families, which is why the Doyles, Freezes, Fogles, and Sochackis have been so willing to give of themselves today.

The U.S. Occupational Safety and Health Administration is a more effective federal agency than it was just two years ago. Secretary of Labor Elizabeth Dole and OSHA Administrator Gerard Scannell are to be commended for their leadership in revitalizing enforcement programs and for drafting a directive that is an important first step in recognizing the rights of victims. While we appreciate the draft directive, it is not enough. As lawyers like to say, what is done by the pen can be undone by the pen. In the case of OSHA, there is another deficiency. What the Secretary and OSHA Administrator establish as policy has limited impact in the 21 states that have occupational safety jurisdiction. That means that a directive can be ignored in these states In our view, the principles enumerated in S. 2442 should be established by law, and not be left to discretion. 8

Finally, it is important to recognize that the reforms enumerated in S. 2442 will change OSHA's character by giving it a constituency that will be very different in many ways. As a result, OSHA's inspectors and hygienists will have to gain new skills in interacting with people who are suffering from grief and despair. That is a task that OSHA will have to face with sensitivity and caring. But this is also a task that OSHA should have undertaken 20 years ago, when the agency was first established.

Mr. Chairman, the second Workers' Memorial Day will be held this April 28. We trust that those who attend these activities will hear about S. 2442 and how this legislation is an important step for workplace safety reform in the U.S. We also trust that our federal government will use both the hearing today and Workers' Memorial Day to carefully contemplate the need to support this legislation. We are confident that scrutiny of this legislation will grow, and that with increased scrutiny will come support for S. 2442.

In closing, S. 2442 does more than protect the rights that have been neglected for far too long. This legislation seeks to protect families and is a preventive health measure. We applaud you for your leadership in offering this legislation and thank you for this opportunity to be here today.

Senator SIMON. Since the OSHA administrator is still here, if I may — Do you pronounce your name Scannell or Scannell?

Mr. SCANNELL. Scannell.

Senator SIMON. OK, I'm sorry. I have been mispronouncing it. I know this has just hit you all of a sudden, but what do you think of the idea Mr. Kinney has here, so that families could make an appearance but not be participants.

Mr. SCANNELL. That sounds very attractive, you just have to find the spot in the process to work that out, so I'll be glad to work with Mr. Kinney with his staff on that.

Senator SIMON. If you could do that. I think we're getting close to getting something worked out here that could benefit everyone, and I appreciate that.

Let me just add for the record here, Mr. Kinney got interested in this whole subject because he had a brother killed in an industrial accident.

Let me ask Mr. Holzhauer and Mr. Kinney, in terms of the requirement that we now have where an employer reports only when it is in multiple hospitalization, should that be changed? That's not part of this law, but it's——

Mr. KINNEY. I think it should change, but I think also Congress should give Mr. Scannell a couple more hundred million dollars. I know on several area offices they call it catastrophic inspections, when they are required to go out and investigate a fatality and I know of a lot of area offices in Florida, and various parts of the country where there's a lot of construction activity, in particular, they don't have time for programed inspections. They don't have time to go out and look at the Milwaukee Seven tunnel where Rick Sochacki died, and we need to beef up this agency and give it more resources and I think it's time to do that. I think if you go around and talk to people you're going to find that people are really shocked when they see how small OSHA is compared to EPA.

In fact, there are more EPA people across the street than there are of OSHA people in the entire United States. We've got six fish and game inspectors for every job inspector in this country as near as we can tell.

Mr. HOLZHAUER. I agree with that. I think it's an issue that would require a good deal greater resources on the part of OSHA to accomplish, but I think certainly that would be a way of handling. I think by and large increased inspection, increased involvement in the work place is something we should look forward to.

Senator SIMON. Dr. Rigaud, I don't have any questions, but we appreciate your testimony that having families involved is part of the healing process, and I think that's important for us to know also.

I have no further questions. We thank you very, very much for your testimony. I think we're inching ahead, and I appreciate, Mr. Scannell, Assistant Secretary Scannell, your leadership. Clearly you have on your own moved in a direction that is a helpful one. I think the point has been made by the witnesses, however, that if Tom Smith or Jane Jones is in your position tomorrow that can change overnight, so that we ought to be looking at statutory changes here, and I think we're moving in a direction so that families can be protected.

And again my special thanks to the families who came. Your standing up and not simply grieving is a great tribute to your sons, and we're going to be able to protect more people because your standing up.

[Additional statements and material submitted for the record follow:]

Victims Speak Out

Results of a Survey by The National Safe Workplace Institute

September, 1989

The National Safe Workplace Institute
122 South Michigan Avenue
Suite 1450
Chicago, Illinois 60603
(312) 939-0690

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Survey Highlights

- Forty-nine percent of the people surveyed said that they had never seen the citation or investigation report issued by the Occupational Safety and Health Administration (OSHA) or corresponding state agency in their family member's death. Thirty-seven percent said that they did not even know they could have access to this information.
- Seventeen percent of those who had seen the citation or investigative report had to pay for the privilege—in one case $56.10.
- Ninety-three percent believed OSHA, as a matter of policy, should contact family members to explain its procedures, and 86% agreed that the family should have the right to meet with OSHA before the investigative file is closed.
- Ninety-eight percent felt that they should have the right to know if and when OSHA was meeting with employers to resolve penalties regarding their family member's death, and 71% reported that they would attend such meeting if given this right.
- Seventy percent of the families responded that they had no idea at all what OSHA was doing in the death of their family member.
- More than four out of five respondents felt that if they had had more contact with OSHA, the agency would have imposed a higher penalty on the employer.

Support for this initiative comes from the

J. Roderick MacArthur Foundation.

Victims Speak Out:

Results of a National Safe Workplace Institute Survey

The National Safe Workplace Institute recently conducted a survey involving 203 families of workers killed in job-related accidents between 1986 and 1988. The purpose of this survey was to learn what these families thought and felt about OSHA, how the agency (and corresponding state agencies) had treated them, and what they knew about OSHA's services and its obligations to them. A total of 203 families responded to written questionnaires that were mailed to about 250 families in all 50 states during May and June of 1989. (In a small number of cases, the families of workers killed in mining mishaps responded to the survey.)

We also asked these families for input on changes that OSHA should make in order to better serve their needs. NSWI received the names of families that we eventually contacted from state governments (industrial commissions or workers' compensation boards), newspaper stories, labor unions, and other sources. It is important to note that NSWI was able to make contact with a small fraction of those we attempted to reach for the purpose of distributing the questionnaire. During the first months of 1989, Institute researchers attempted to make contact with over 1,000 families in order to identify those who would eventually receive the questionnaire. In many cases, families had moved, did not speak English, or would not participate in the Institute's research program. Survey results follow below.

Question 1: **Have you read the citation and/or investigative file by the Occupational Safety and Health Administration (or the state agency) on the death of your family member?**

Question 1a: **If yes, did you have to pay to receive this information?**

Forty-nine percent of those surveyed had never seen the citation or investigative report. This information, in theory, is freely accessible under the Freedom of Information Act (FOIA), but 37% claimed they did not even know that this information was available to them. Forty-four percent replied that they had received the file only after a FOIA request. Additionally, 17% of those who had seen the report had to pay for the privilege—in one case as much as $56.10. Others commented that while the information was free, they had to hire attorneys to assist them in filing their FOIA requests. Still others complained that OSHA sent incorrect or incomplete information.

One serious problem is that the victims are generally unfamiliar with FOIA, the procedure for filing an effective FOIA request, and what to do if OSHA fails to respond. FOIA requires that all federal agencies "make available for public inspection and copying final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases" unless there is some compelling reason for nondisclosure (i.e., the request falls within a statutorily exempted category). The

first step involves deciding which OSHA office to contact. Area offices usually have the working files. By statute, a FOIA request need not follow any specific form; all it must do is make reasonably clear what information the requester desires. The more precise the request, the better the chances of a successful reply.[1] However, a FOIA form does exist, and its use may result in obtaining the requested information more easily. Upon receiving the request, OSHA has 10 business days in which to respond—a period that can easily be stretched into nine months. Victims can take complaints or appeals to the Solicitor of Labor. If the result is not satisfactory, the requester can then file suit against the Secretary of Labor in federal district court.

Victims can also run into trouble in court. Unless they can afford to hire a lawyer, the highly technical language of the law becomes a very real stumbling block. Even if victims do have an attorney, OSHA has the resources of the Department of Labor on its side, which can be intimidating to the uninitiated. Victims do, however, enjoy one important advantage: federal courts tend to interpret the Freedom of Information Act broadly, in favor of compelling disclosure.

FOIA limits fees to "reasonable standard charges for document search and duplication." Fee reductions or waivers are available if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester." OSHA must provide the first two hours of search time and the first 100 pages in copying fees free of charge. All fees must be pre-set and published by the agency to avoid arbitrariness.

Question 2: **In general, how do you regard OSHA as a government agency?**

The respondents' overall reaction to OSHA was decidedly negative. While 5% found OSHA "excellent," 71% described OSHA as a "poor" or "below average" government agency. An additional 24% called it only "average." A common thread of discontent ran through the responses:

"The agency does not aggressively pursue failures to learn from the past. If it did evaluate the failures of the workplace..., we could reduce or eliminate future human losses."
Gerald L. Reuter, Massachusetts

"We found OSHA to be a typically bureaucratic agency. We were told a different story by each person we talked to. There were things the investigators missed seeing.... After we received the accident report, it was too late to point these out."
Pam Dodge, Oregon

"I believe it's an 'I don't care' agency. As you can tell, we are very bitter with OSHA."
Joyce L. Reamy, Maryland (now of Nevada)

"They never got in contact with family members to explain or talk about the accident. They sit silent while family members guess and wonder what's going on—or what went wrong."
Antal and Carrie Skerlak, Kentucky

"The report sent me said my son was killed because the OSHA safety poster was not displayed in a prominent place. After getting my Congressman into the act, I finally received the actual report. It was a very poor job of investigation and did not follow OSHA regulations."
Basil Martin, Mississippi

Question 3: **Do you think that OSHA should contact the next-of-kin (family members) of those killed to explain its procedures?**

An overwhelming 95% of those surveyed responded affirmatively—a clear mandate that these people feel entitled to information about the death of a family member. The other five percent answered that they were not sure but voiced no additional comments.

Question 4: **Would you like to have the right to know if and when OSHA is meeting with employers to resolve penalties regarding the death or injury of your family member?**

Ninety-eight percent of the family members believed that they should have this right. The other two percent were not sure.

Question 5: **Would someone from your family attend such meetings if you had that right?**

Seventy-one percent said that they or someone from their family would definitely attend such meetings. Their responses make clear that they want the opportunity to help encourage settlements or decisions that would ensure injury protection.

The remaining respondents, with one exception, indicated that they were not sure if they would participate in such sessions. One respondent indicated that his family could not envision participating under any circumstances.

Question 6: **Do you believe, in general, that if you or someone from a family of a dead worker had more contact with OSHA that OSHA, would be more likely to propose more severe penalties on the employer?**

Eighty-three percent answered yes to this query. Ten percent were unsure, and only seven percent responded with a definite "no."

Question 7: **Should the family of a killed worker have the right to meet with OSHA before a citation is issued or an investigative file is closed?**

Again, the vast majority (86%) answered positively, five percent were unsure, and nine percent replied in the negative; but, as the next question would show, most had no idea what was going on.

Question 8: **Did you understand what OSHA was doing regarding your family member's case?**

Only 30% reported that they had any idea what OSHA was doing with respect to their family members' cases. Half of those added that they knew *exactly* what OSHA was doing: nothing.

Sixty-eight percent of the respondents said they did not know what the government was doing. Finally, two percent were not sure.

Question 9: **How do you feel about the way OSHA has treated you or failed to treat you?**

Once more, a note of dissatisfaction echoed throughout the responses:

"My first instinct is to say that I am infuriated. Infuriated because they permitted the accident to take a life in the first place. Infuriated because the investigation and citation were a perfunctory gesture, not made to discipline or punish. And victimized. Outraged that a public agency can be allowed to operate in this way."
Jana Studelska, Minnesota

"They didn't treat me at all. It's as though the families didn't even exist or have a right to know anything about the case or the findings regarding the case."
Lynda Bradley, North Dakota

"I felt just like another statistic, because I didn't know and still don't know what they are doing."
Linda Lyons, Texas

"I think they should have contacted the spouse and parents of victims— let them know what was found, what fines were issued and why they didn't recheck to see that safety items were fixed, replaced, or installed. In other words, I have a bad feeling about OSHA."
Mary Windisch, Kansas

"I personally feel that the regulations presently on the books were not followed and that OSHA did a very incomplete job and was very discourteous in their correspondence with me and my lawyer."
Basil Martin, Mississippi

"I was told by members of my husband's company that OSHA had been there to investigate the accident. OSHA was to make a report. Then I was told that the accident was covered by the Mine Safety people and OSHA didn't have to send me a report."
Royce Malley, California

Question 10: **What changes do you want to see made within or by OSHA?**

Nearly a third of the replies called for increased contact with the family and greater victims' rights. Many others felt that stiffer penalties and better and more frequent inspections would add to OSHA's effectiveness. As one respondent from Minnesota put it, *"I want to see an aggressive, effectual OSHA. The OSHA Act of 1970 has left the working population out to dry. Until an accident occurs, we live under the potentially fatal assumption that we are safe at work. It is not true. You may never go home again."*

Overall, the survey elicited feelings of anger, frustration, and helplessness. Family members of dead workers strongly believe that OSHA is not doing its job and is unresponsive to their needs. These families want significant changes in the way that OSHA operates. Most importantly, they want to be allowed to participate in all phases of enforcement and adjudicative processes.

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* Allan Adler, editor, *Litigation Under the Federal Freedom of Information and Privacy Act* (Washington, D.C.: The American Civil Liberties Union, 1988), pp. 7-8.

NSWI The National Safe Workplace Institute

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Memorandum

To: Reviewers of Draft Legislation

From: Joseph A. Kinney and Kimberley Chaput

RE: Victims' Rights: Litigation Right of Employees Participating in Adjudicartive Proceedings under the Occupational Safety and Heath Act of 1970

Date: June 22, 1989

Purpose

The purpose of this memorandum is to review the major cases relevant to the rights of workers and their family members with respect to enforcement, settlement, and adjudicative matters under the Occupational Safety and Health Act (OSH Act). To date, only unions have gone to court to determine these rights. No litigation exists with respect to non-union workers or surviving family members (in cases of fatalities).

General Background

Congress vested the prosecutorial arm of the Occupational Safety and Health Act in the Secretary of Labor and the adjudicative arm in the Occupational Safety and Health Reciew Commission (OSHRC or "the Commission"). Cuyahoga Valley Ry. Co. v. United Transportation Union, __U.S.__ 106 S. Ct. 286, 288 (1985). Because of this, the OSHRC cannot review the Secretary's decision to

withdraw a citation, since it would put both powers in the Commission's hands.

The Act does not expressly mention victims, but they presumably have the same rights as "employees or their representatives," which the Act does discuss. These rights include the opportunity to take part in hearings when their employer has received a citation or penalty from OSHA.

Employees can become parties in two ways. First, if their employer has filed a notice of contest, employees may petition to obtain party status at any time prior to the commencement of the hearing before an administrative law judge. 29 C.F.R. § 2200.20(a). Second, if the employer has decided not to contest, workers can object that the time for abatement of the violation given in the citation is unreasonable. 29 U.S.C. § 659(c).

The main question is exactly which issues employees who become parties via the second option can litigate. (It is uniformly decided that employees who become parties when the employer contests have the right to partake in discussions on all subjects relevant to the case.) The answer differs from jurisdiction to jurisdiction, depending on how the court chooses to interpret § 659(c). The Fifth and D. C. Circuits hold that employees, as parties analagous to intervenors as of right under Fed. R. Civ. Pro. 24(a), have the right to be full participants in any issue. Donovan v. Oil, Chemical and Atomic Workers, 718 F.2d 1341, 1350 (5th Cir. 1983). *See also*, Oil, Chemical and Atomic Workers v. O. S. H. R. C., 671 F.2d 643, 647 (D.C. Cir. 1982). Other courts, however, have limited employee participation in this situation to challenging the

reasonableness of the abatement period. Donovan v. Allied Indus. Workers of America, 760 F.2d 783, (7th Cir. 1985); Marshall v. Sun Petroleum Products Co., 622 F.2d 1176, 1185 (3d Cir. 1980); Donovan v. United Steelworkers of America, AFL-CIO, 722 F.2d 1158, 1160 (4th Cir. 1983). The Supreme Court has not considered this issue, so results will continue to vary by jurisdiction.

When an employer has withdrawn its contest and thus is no longer a party, employees who gained party status through 29 C.F.R. §2200.20(a) lose their right to contest anything other than the resonableness of the abatement period. Donovan v. Oil, Chemical and Atomic Workers, *supra*, at 1353.

No Circuit allows an employee to challenge a determination by the Secretary of Labor not to appeal a decision of the OSHRC dismissing a citation.

[1]If an employer notifies the Secretary that he intends to contest a citation under section 658 (a) of this title or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 658 (a) of this title, any employee or representative of employees files notice with the Secretary alleging that the period of time fixed in the citation for abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of Title 5 but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a good showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees an opportunity to participate as parties under this subsection.
29 U.S.C. § 659(c).

STATE OF INDIANA
IOSHA
BOARD OF SAFETY REVIEW

1013 STATE OFFICE BLDG.
INDIANAPOLIS, 46204–2287
PHONE (317) 232-2691

June 20, 1989

Mr. Robert Hensinger
502 South Walsh
Garrett, Indiana 46738

Case Docket No. 88-60

Dear Mr. Hensinger:

Your request for party status in the case of the Commissioner of Labor, Complainant vs. Bastian Plating Company, Inc., Respondent has been received.

The reason for the delay in answering this request is the recent illness and death of our attorney L. L. DeWester.

After checking the act very carefully it is apparent that we cannot grant this request for Party Status.

For your information all hearings are open and you or your group can attend all hearings on this matter, as observers, without party status.

We will be glad to keep you informed on this matter; such as hearing dates and times.

A pre-hearing is set between the parties for 10:00 a.m., E.S.T., Room 1013 State Office Building on Wednesday, June 21, 1989. The purpose of this meeting is to:

(a) Set date for parties to end discovery
(b) Set date for parties to exchange exhibit and witness lists
(c) Set date and time for trial

If you have any further questions concerning this matter please contact the IOSHA Board of Safety Review.

Sincerely,

L. K. Van Sickel, Chairman
IOSHA Board of Safety Review

LKV:cyn

cc: Robert B. Wente, Deputy Attorney General
Robert D. MacGill and Mindy K. Dale, Attorneys

An Equal Opportunity Employer

Senator SIMON. The hearing stands adjourned.

[Whereupon, at 10:20 a.m., the committee adjourned subject to the call of the chair.]